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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

RAJ CHAMPANERI,

Plaintiff and Appellant,

v.

DEPARTMENT OF TRANSPORTATION,

Defendant and Respondent.

B245480

(Los Angeles County  
Super. Ct. No. BC462656)

APPEAL from a judgment of the Superior Court of Los Angeles County. Ruth Ann Kwan, Judge. Affirmed.

Burke Molina and Gregory M. Burke for Plaintiff and Appellant.

Ronald W. Beals, David Gossage, Lucille Y. Baca, G. Michael Harrington, and Jeffrey A. Wilcox, for Defendant and Respondent.

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Plaintiff Raj Champaneri brought this action against his employer, the California Department of Transportation (CALTRANS) alleging “wrongful termination in violation of public policy,” intentional and negligent infliction of emotional distress and breach of contract. The trial court granted CALTRANS’s motion for summary judgment and plaintiff appeals from the subsequently entered judgment. We affirm.

### **FACTS AND PROCEEDINGS BELOW**

The facts are not in dispute.

The events that sparked this action commenced when plaintiff was a field inspector for CALTRANS in its Outdoor Advertising Division. His job involved enforcement of regulations pertaining to billboard advertising. In 2005, an advertiser accused plaintiff of receiving bribes from a competitor to ignore the competitor’s violations of CALTRANS regulations. This accusation triggered an investigation that resulted in CALTRANS charging plaintiff with 58 violations of its rules and regulations. In 2007, CALTRANS terminated plaintiff’s employment.

Plaintiff appealed his termination to the State Personnel Board. At the hearing CALTRANS dismissed 54 of its allegations, and the hearing officer rejected all but one of the CALTRANS’s remaining allegations including the bribery allegation which he found not credible. The hearing officer sustained the charge of unauthorized use of a State cellphone. Plaintiff was ordered reinstated with a five percent reduction in salary for three months. The Board issued its final decision adopting the hearing officer’s ruling in April or May 2010.

In November 2010, plaintiff filed a claim against the State seeking damages for his 2007 termination. The State rejected the claim in December 2010 and plaintiff filed this action in May 2011.

Plaintiff’s second amended complaint alleges causes of action for “wrongful termination in violation of public policy,” intentional and negligent infliction of emotional distress and breach of contract. CALTRANS answered and moved for summary judgment on the grounds: (1) a common law cause of action for wrongful

termination is barred by sovereign immunity (Gov. Code, § 815, subd. (a)); (2) the common law causes of action for intentional and negligent infliction of emotional distress are barred by sovereign immunity and the Workers Compensation Act; (3) a common law cause of action for breach of contract cannot be brought against the State and (4) all four causes of action are barred for failure to file a timely claim against the State.<sup>1</sup>

The court granted the motion on the ground the causes of action for wrongful termination and infliction of emotional distress are barred by sovereign immunity. (Gov. Code, § 815, subd. (a).)

Plaintiff filed a timely appeal.

## **DISCUSSION**

### **I. PLAINTIFF CANNOT MAINTAIN THIS ACTION AGAINST THE STATE UNDER THE COMMON LAW TORT OF WRONGFUL EMPLOYMENT TERMINATION NOR UNDER THE CALIFORNIA FALSE CLAIMS ACT.**

Plaintiff's first cause of action labeled "wrongful termination in violation of public policy" alleges that his employment termination violated "*the public policy*" described in Labor Code section 1102.5, Government Code section 12653 and 31 U.S.C. sections 3729-3733. (Italics added.) As the trial court correctly held, common law actions for wrongful termination against public policy (commonly referred to as *Tameny* actions),<sup>2</sup> are barred by Government Code section 815 which states: "Except as otherwise provided *by statute* (a) A public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person." (Emphasis added.) Because *Tameny* actions are based on common law, "section 815 bars *Tameny* actions against public entities." (*Miklosky v. Regents of University of California* (2008) 44 Cal.4th 876, 900.)

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<sup>1</sup> Plaintiff does not appeal the court's ruling as to the breach of contract cause of action.

<sup>2</sup> See *Tameny v. Atlantic Richfield Co.* (1980) 27 Cal.3d 167.

Government Code section 815<sup>3</sup> does not bar wrongful termination actions based on statutory law. Therefore, on appeal plaintiff asserts that behind his common law claim lies a statutory metaclaim for violation of section 12653, the whistle-blower provision of the California False Claims Act. At the time of the events in this case, section 12653, subdivision (a) provided: “No employer shall discharge, demote, suspend, threaten, harass, deny promotion to, or in any other manner discriminate against an employee in the terms and conditions of employment because of lawful acts done by the employee, on behalf of the employee or others in disclosing information to a government or law enforcement agency or in furthering a false claims action, including investigation for, initiation of, testimony for, or assistance in, an action to be filed under section 12652.”<sup>4</sup>

Plaintiff’s attempt to invoke the whistle-blower protections of the False Claims Act fails.

The complaint alleges that CALTRANS terminated plaintiff “to silence plaintiff from disclosing the numerous federal violations related to [the outdoor advertising] program that would have cost CALTRANS tens of millions in federal funding. The termination allegedly “took place shortly after plaintiff complained about the numerous violations, and just months before the [Federal Highway Administrations] audit of CALTRANS.” These allegations do not state a cause of action under section 12653 because the False Claims Act defines a “claim” in relevant part as “any request or demand . . . for money, property, or services . . . that . . . [i]s presented to an officer, employee, or agent of the state or of a political subdivision.” (§ 12650, subd. (b)(1)(A). Thus, in order to allege protected activity under the Act, an employee must state facts showing that his activity was in furtherance of preventing a false “claim,” i.e., an action

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<sup>3</sup> All statutory references are to the Government Code except where otherwise stated.

<sup>4</sup> In 2012, section 12653 was repealed and reenacted to the same effect but in different language. (Stats. 2012, ch. 647.)

predicated on funds wrongfully claimed from the State or a political subdivision thereof. The State cannot make a false claim against itself and a false claim by the State against the Federal Government is not covered by the Act which only applies to “the state or ... a political subdivision.” (*Ibid.*)<sup>5</sup>

**II. PLAINTIFF CANNOT MAINTAIN THIS ACTION AGAINST THE STATE FOR INFLICTION OF EMOTIONAL DISTRESS.**

Section 815 also bars plaintiff’s common law causes of action for intentional and negligent infliction of emotional distress. (*McAllister v. Los Angeles Unified School District* (2013) 216 Cal.App.4th 1198, 1218.) Plaintiff argues damages for infliction of emotional distress are recoverable as “special damages” under section 12653. We need not decide that question because we have held that plaintiff does not have a cause of action under section 12653.

**DISPOSITION**

The judgment is affirmed. Respondent is awarded costs on appeal.

NOT TO BE PUBLISHED.

ROTHSCHILD, Acting P. J.

We concur:

CHANEY, J.

MILLER, J.\*

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<sup>5</sup> We do not decide whether the whistle-blower provisions of the Federal False Claims Act (31 U.S.C. § 3730) might apply here (See *Driscoll v. Superior Court* (2014) 223 Cal.App.4th 630, 638) because plaintiff has not briefed that issue.

\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.